evidence regarding his bank account. The appellant went into the witness box and was cross-examined, but no question was put to him regarding his banking account either by his own counsel, counsel for the prosecution or by the Magistrate. The account was in evidence and there was nothing to justify the conclusion that, because he did not volunteer evidence regarding it, it should be assumed it is incriminatory. The proper conclusion would seem to be that, inasmuch as on the face of it there was nothing directly connected with the offences alleged, the learned Assistant Legal Adviser was of the opinion that there was nothing to assist the prosecution therein, and so did not question the appellant about it. I do not know in what way the learned Magistrate expected the appellant to display resentment and animus in Court at the production of his bank account, but anyhow, if there was nothing in the account of which the witness was ashamed or which he was not unable to explain, there was no necessity for any resentment or animus.

The appellant had the services of a legal practitioner before the Magistrate and presumably relied on him to conduct his case in accordance with what his trained legal knowledge dictated as being in the best interests of his client. To adopt the phraseology of the grounds of judgment "A cold legal defence coupled with such doubts as it could throw on the adequacy of the prosecution evidence" may have been advised in place of "the animated resentment" that the learned Magistrate expected.

I wonder what were "the doubts it could throw on the adequacy of the prosecution evidence" and also what is to be inferred from the initial sentence of the paragraph, "The defence..... raised grave doubts as to the defendant's position." Is it to to be implied that there were doubts in the learned Magistrate's mind as to whether or not the appellant did accept the sums alleged? If so his proper course was to give the appellant the benefit of the doubt and to acquit him.

On these considerations alone the indications are that the learned Magistrate misdirected himself as to the memory of the witness Cheah Pak Pang being supported by his notes when such notes are not in evidence and also as to the construction to be placed upon the evidence given by the appellant. Further I am not satisfied as to what the Magistrate's references to "doubts" mean.

Where the question is whether or not a magistrate or judge sitting without a jury properly directed his mind to the consideration of a relevant point of law and his reference to such direction is as meagre as in the present instance (i.e., regarding the danger of convicting on the uncorroborated evidence of an accomplice) the rest of his judgment must be unobjectionable in the matter of direction in order that the appellate Court may be satisfied as to the propriety of the direction in question.

In my opinion on grounds (iii) and (xi) alone this appeal must succeed and it is unnecessary therefore for me to consider the other grounds of appeal.

The conviction of the appellant on both charges is quashed, the sentences set aside and he is acquitted.

Appeal allowed.
Conviction quashed.

P. P. vs. KOTHANDARAMAN.

[App. Crim. Juris. (Horne, J.) June 25, 1941]

Road Traffic Enactment 1937 (17 of 1937) section 71 — Evidence Enactment (Cap. 10) section 114 (e) — Failing to conform with indication of a traffic sign — Presumption that sign was lawfully placed on road.

The respondent was charged with having failed to conform with the indication given by a Stop-Look-Go sign contrary to section 71 (b) of the Road Traffic Enactment 1937. Although there was evidence that he had deliberately driven past the sign he was acquitted, without being called on for a defence, on the ground that it was necessary for the prosecution to prove affirmatively that the sign was lawfully placed at the road junction in question, and also that it was in accordance with the requirements of the Traffic Signs Rules, 1938.

Held. on appeal, reversing the decision of the Magistrate, that the prosecution were not bound to prove as part of the case that the sign had been lawfully placed on the road and was of the prescribed type.

The presumption under section 114 (e) of the Evidence Enactment (Cap. 10) should apply in favour of the prosecution in the case of official acts provided by law.

On the 10th February, 1941, while driving a bus in Seremban the respondent slowed down at a "Stop-Look-Go" sign at the junction of two streets but passed it without actually stopping. In certain minor particulars the sign did not comply with the requirements of the Traffic Signs (Size, Colour and Type) Rules 1938, made under the Road Traffic Enactment. The respondent was charged under section 71 of the Road Traffic Enactment, the provisions of which, relevant to such charge, are as follows:—

> "71. Where..... any traffic sign being a sign for regulating the movement of traffic or indicating the route to be followed by traffic and

being of the prescribed size colour and type..... has been lawfully placed on or near any road any person driving or propelling any vehicle who—

(*a*) * * * * *

(*b*) fails to conform to the indication given by the sign shall be guilty of an offence against this Enactment.

The Magistrate acquitted the respondent on the ground that since the sign did not comply with the Rules it was not a traffic sign lawfully placed on the road.

The Public Prosecutor appealed.

Case referred too:—

(1) *Swift v. Barrett* (1940) T.L.R. 650.

A. J. Grattan-Bellew, Deputy Public Prosecutor. for Public Prosecutor:—

The Magistrate should have applied the presumption under section 114 (e) of the Evidence Enactment. The case of Swift v. Barrett[1] is not binding on the Court and should not be followed.

The words "shall conform as to size and type with the indications given in the diagram set out in the said schedule" in rule 3 of the Traffic Signs (Size, Colour and Type) Rules 1938, do not mean that it must be identically the same as the diagram.

Rule 4 permits the dimensions of the sign to be varied when the wording on the sign is in English and other languages.

Respondent in person.

Horne, J.—The respondent was charged before the Magistrate with having failed to conform with the indication given by a Stop-Look-Go sign contrary to section 71 (*b*) of the Road Traffic Enactment. He was acquitted without being called upon for a defence, although there was evidence that he had deliberately driven past the sign. The Public Prosecutor appeals.

Before the Magistrate the prosecution thought it necessary to prove affirmatively that the sign was lawfully placed at the road junction in question, and also was in accordance with the regulation.

So far as is material to the present matter, section 71 provides that where any traffic sign being a sign for regulating the movement of traffic and being of the prescribed size colour and type has been lawfully placed on a road any person driving any vehicle who fails to conform to the indication given by the sign shall be guilty of an offence.

Although it may be said that the offence is not merely disregarding a traffic sign but disregarding a traffic sign which has been lawfully placed on the road and is of the prescribed type, etc., nevertheless, the prosecution are not, in my opinion, bound to prove as part of the case for the prosecution that the sign has been lawfully placed on the road and is of the prescribed type; and a Court should apply the presumption under section 114 (*e*) of the Evidence Enactment and presume, until the contrary is proved, that the official acts of making and placing the sign have been regularly performed. The learned author of Woodroffe and Ameer Ali on Evidence, 9th Edition page 809 states that "the meaning of this rule is that if an official act is proved to have been done it will be presumed to have "been regularly done." Therefore upon production of the regulation authorizing the highway authority to construct and place traffic signs on the road and upon it being shown that a sign apparently in conformity with the regulations is situate on the particular road, the Court should presume that the official acts of making and placing the sign have been regularly performed. It is then for the accused to show the contrary if he is able to do so; but as the learned author above referred to points out (p. 808) the presumption can only be overturned by strong evidence.

The prosecution having taken upon themselves in this case to prove more than necessary, it is not surprising that the Magistrate came to the conclusion on the evidence that no offence was disclosed. He did not, however, apply or direct his mind to the presumption under section 114 of the Evidence Enactment. Allowing for its application and giving the respondent the advantage of using the evidence called, can it be said that I now ought to hold that the presumption has been rebutted? The Magistrate's view of the evidence and of the effect of the regulations, if accepted, would lead me to say that the presumption had been rebutted. But I think the Magistrate has placed a somewhat narrow construction on regulation 4 which permits translations of the words Stop-Look-Go to be added in a convenient position, the *dimensions of the signs being varied* to allow for such addition. In the Magistrate's view all that can be done is to increase the general size of the notice board portion of the sign. In my view regulation 4 must be read with regulation 3 and the words *"the dimensions of the signs being varied"* permit the authority to alter the dimensions of the spacing between the Stop, the Look and the Go.

It must be noted too that the principal part of the sign, the red triangle within a red circle, is of correct measurement and the notice board is only incorrect in length, being 29¼ inches instead of 30 inches, the size of the letters is also correct and it is

only the vertical spacing between Stop-Look-Go that does not conform to the indication given in the scheduled diagram. But this alleged error is a permitted variation under regulation 4; "dimensions of the signs" therein referred to means the dimensions shewn on the scheduled diagram. I am unable to accept the view that the regulations compel the authority to increase the allover size of the notice board in order to insert the translations. That would be giving the local authorities concerned so great a latitude that the general standard indicated in regulation 3 could be widely departed from and the result would be a lack of uniformity in general outline and confusing to drivers. On my view of the regulations and the evidence all that is wrong here is that the notice board portion of this sign is short of the standard length of 30 inches by 3/4 of an inch. Such an error should not, in my opinion, be considered strong enough evidence to rebut the presumption that the sign was lawfully made and lawfully placed on the road and I accordingly set aside the order of acquittal and direct that the accused be retried.

Appeal allowed.
Retrial ordered.

RAMASAMY vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Horne, J.) April 17, 1941]

Criminal Procedure Code (Cap. 6), sections 66 to 71, 73, 75; section 421 — Bond for good behaviour — Procedure not in accordance with provisions of Criminal Procedure Code — Whether omission to comply with provisions of section 71 an irregularity or an illegality — Test as to what is an irregularity and what is an illegality — Omission to follow correct procedure on requirement to show cause under section 69 an illegality — Evidence once given by defendant on affirmation cannot be withdrawn but entitles prosecution to cross-examine — Admissibility of evidence may depend on section under which proceedings are instituted.

The appellant on the 15th January, 1941, was charged with five others with an assault upon another person. They were acquitted and discharged. The Magistrate then made an order calling upon four of them including the appellant to shew cause why they should not be ordered to execute a bond for a sum of $100 each with two sureties for a period of six months. The Officer in Charge of the Police District was ordered to investigate the case.

Subsequently a summons was issued under section 67 of the Criminal Procedure Code (Cap. 6). The summons did not contain the substance of the information on which it was issued as required by section 71 of the Code.

On the 6th March, 1941; three persons were before the Court on this summons. Two were discharged but the appellant was called upon orally to shew cause under section 69 (c) of the Code. No fresh summons was issued and no formal amendment was made.

The appellant gave evidence and had not finished when the case was adjourned.

When the case was resumed the Advocate appearing on behalf of the appellant submitted that since the summons had been issued under section 67 an order under section 69 (c) could not be made thereon.

The Magistrate ruled against this submission whereupon the Advocate stated he did not propose to proceed with the defence and that he withdrew the evidence given by the appellant.

The Magistrate then ordered the appellant under section 69 of the Code to execute a bond.

The appellant appealed.

Held (i) That the Magistrate has no power to order a person who had been acquitted to shew cause under section 67.

(ii) That the summons issued under section 71 of the Code was fresh foundation for the proceedings.

(iii) That the omission to state the substance of the information on the summons was an irregularity.

(iv) That the calling upon the appellant orally to shew cause under section 69 of the Code was an illegality. The appellant should have been discharged under section 75 of the Code and a fresh summons issued.

(v) That the withdrawal of the evidence of the appellant was unwarranted.

This was an appeal from a conviction of the Magistrate, Port Dickson.

On the 15th January, 1941, appellant and five others were summoned to answer a charge of assault. All were acquitted but the Magistrate, immediately upon such acquittal, made the following Order:—

"It now appears to me. Raja Suleiman bin Raja Mohamed. Magistrate, Port Dickson, that:

1. Govindarajoo,
2. Ramasamy,
3. Kuppusamy,
4. Gopalan, and
5. S. Sinnasamy

are likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace.

You the said Govindarajoo, Ramasamy, Kuppusamy, Gopalan and S. Simasamy are hereby called upon to show cause why you should not be ordered to execute a bond for a sum of $100 each with two sureties each for a period of six months.

I direct the Officer in Charge of Police District, Port Dickson, to investigate into this case.

(Sgd.) Raja Suleiman,
15-1-41."

Upon the directions of the Magistrate the Police then made further enquiries and afterwards issued a summons against the appellant and the other four persons concerned containing the following "charge":

"You are hereby required to show cause why you should not be bound over in the sum of $100 with two sureties to keep the peace for a period of six months; Section 67, Chapter 6, Revised Edition."